

§ 1206.56

§1206.52, you must increase value to the extent that your gross proceeds are reduced.

[72 FR 71241, Dec. 17, 2007]

§ 1206.56 Transportation allowances—general.

(a) Where the value of oil has been determined under §1206.52 or §1206.53 of this subpart at a point (e.g., sales point or point of value determination) off the lease, ONNR shall allow a deduction for the reasonable, actual costs incurred by the lessee to transport oil to a point off the lease; provided, however, that no transportation allowance will be granted for transporting oil taken as Royalty-In-Kind (RIK); or

(b)(1) Except as provided in paragraph (b)(2) of this section, the transportation allowance deduction on the basis of a sales type code may not exceed 50 percent of the value of the oil at the point of sale as determined under §1206.52 of this subpart. Transportation costs cannot be transferred between sales type codes or to other products.

(2) Upon request of a lessee, ONNR may approve a transportation allowance deduction in excess of the limitation prescribed by paragraph (b)(1) of this section. The lessee must demonstrate that the transportation costs incurred in excess of the limitation prescribed in paragraph (b)(1) of this section were reasonable, actual, and necessary. An application for exception (using Form MMS-4393, Request to Exceed Regulatory Allowance Limitation) must contain all relevant and supporting documentation necessary for ONNR to make a determination. Under no circumstances may the value, for royalty purposes, under any sales type code, be reduced to zero.

(c) Transportation costs must be allocated among all products produced and transported as provided in §1206.57. Transportation allowances for oil shall be expressed as dollars per barrel.

(d) If, after a review or audit, ONNR determines that a lessee has improperly determined a transportation allowance authorized by this subpart, then the lessee will pay any additional royalties, plus interest determined in accordance with §1218.54 of this chap-

30 CFR Ch. XII (7–1–11 Edition)

ter, or will be entitled to a credit without interest.

[61 FR 5455, Feb. 12, 1996. Redesignated and amended at 72 FR 71241, Dec. 17, 2007; 73 FR 15890, Mar. 26, 2008]

§ 1206.57 Determination of transportation allowances.

(a) *Arm's-length transportation contracts.* (1)(i) For transportation costs incurred by a lessee under an arm's-length contract, the transportation allowance shall be the reasonable, actual costs incurred by the lessee for transporting oil under that contract, except as provided in paragraphs (a)(1)(ii) and (a)(1)(iii) of this section, subject to monitoring, review, audit, and adjustment. The lessee shall have the burden of demonstrating that its contract is arm's-length. Such allowances shall be subject to the provisions of paragraph (f) of this section. Before any deduction may be taken, the lessee must submit a completed page one of Form MMS-4110 (and Schedule 1), Oil Transportation Allowance Report, in accordance with paragraph (c)(1) of this section. A transportation allowance may be claimed retroactively for a period of not more than 3 months prior to the first day of the month that Form MMS-4110 is filed with ONNR, unless ONNR approves a longer period upon a showing of good cause by the lessee.

(ii) In conducting reviews and audits, ONNR will examine whether the contract reflects more than the consideration actually transferred either directly or indirectly from the lessee to the transporter for the transportation. If the contract reflects more than the total consideration, then ONNR may require that the transportation allowance be determined in accordance with paragraph (b) of this section.

(iii) If ONNR determines that the consideration paid under an arm's-length transportation contract does not reflect the reasonable value of the transportation because of misconduct by or between the contracting parties, or because the lessee otherwise has breached its duty to the lessor to market the production for the mutual benefit of the lessee and the lessor, then